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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 590

HERMAN O. HAGNER AND JULIA C. HAGNER, petitioners

v.

THE UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The Supreme Court of the District of Columbia rendered no opinion. The opinion of the Court of Appeals (R. 10–17) is reported in 54 F. (2d) 446.

JURISDICTION

The judgment of the Court of Appeals was entered November 23, 1931. (R. 17.) A petition for rehearing was denied December 5, 1931. (R. 18.) The petition for certiorari was filed December 24, 1931, and was granted January 25, 1932.

(R. 29.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

1. Whether an indictment which charged that the defendants caused to be placed in the post office at the city of Scranton, in the State of Pennsylvania certain described mail matter to be sent and delivered by the post office to the addressee in Washington, D. C., is sufficient, after verdict, to charge an offense committed in the District of Columbia.

2. Whether a defendant in a criminal case may waive the requirements of Article III, Section 2, of the Constitution that the trial of crimes "shall be by Jury; * * * in the State where the said Crimes shall have been committed," and the provisions of the Sixth Amendment that the accused "shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law * * *."

3. If the constitutional provisions mentioned may be waived, whether they were waived in this case when the defendants failed to file a plea to the jurisdiction and raised the question for the first time by motion in arrest of judgment.

4. Whether the jurisdiction of the Supreme Court of the District in criminal cases is limited by

statute to the trial of crimes and offenses committed within the District.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in the Appendix, *infra*, pp. 44–49.

STATEMENT

The petitioners were indicted and tried in the Supreme Court of the District of Columbia for violating Section 215 of the Criminal Code (U. S. C., Title 18, Section 338; *infra*, pp. 48–49). The indictment alleged that at the District of Columbia the defendants devised a scheme to defraud, which it described in some detail and then averred that the defendants, for the purpose of executing said scheme (R. 2)—

> did place and cause to be placed in the Post Office at the City of Scranton, in the State of Pennsylvania, to be sent and delivered by the Post Office establishment of the United States of America, to the addressee thereof, three certain accounts enclosed in a certain envelope addressed to Merchants' Transfer and Storage Company, 920 E Street, N. W., Washington, D. C. * * *

Upon their arraignment the petitioners entered pleas of not guilty, without questioning the sufficiency of the indictment either as to its form or substance, and thereafter voluntarily proceeded to

trial without objecting to the jurisdiction of the court to hear and determine the issues raised by their pleas of guilty. (R. 3, 7, 8.) The jury found them guilty as indicted, whereupon each moved in arrest of judgment and for a new trial. (R. 8.) These motions being denied, sentence followed (R. 8), and the defendants appealed to the Court of Appeals of the District of Columbia, assigning as the only error the refusal of the court to sustain the motion in arrest of judgment. (R. 7.)

The record in this Court and in the court below includes the indictment, the arraignment and pleas, the motion in arrest of judgment and order overruling same, and the entries appearing upon the Court's docket. So far as the record shows, no question was raised either as to the sufficiency in form or in substance of the indictment, or as to the jurisdiction of the court to determine the issues raised by the pleas of not guilty, until the motion in arrest of judgment was made after verdict. There is no bill of exceptions, and therefore neither the evidence presented upon the trial nor the instructions of the court to the jury appear in the record.

The court below affirmed the judgment of conviction, holding that while the defendants might by a seasonable plea to the jurisdiction have avoided trial in the Supreme Court of the District of Columbia under the indictment, their submission to that court waived the privilege accorded them by Article III, Section 2, of the Constitution, and in

such circumstances they may not, after trial and conviction, for the first time object to that court's jurisdiction. (R. 17.)

SUMMARY OF ARGUMENT

I

The indictment sufficiently charged an offense committed within the District of Columbia. While the indictment did not use the precise language of the statute in charging delivery in the District of Columbia of matter which had been placed in the post office at Scranton, Pennsylvania, it did charge the mailing of a letter to be sent and delivered to the addressee in the District of Columbia. Delivery is presumed from the fact of mailing, and considering the indictment with the reasonable implications from its language, it sufficiently charged delivery in the District of Columbia.

Even if the indictment was formally defective, the formal defects ought to be disregarded under the provisions of Section 1025 of the Revised Statutes. The petitioners were fully informed of the charges against them, and apparently went to trial in the belief that they were charged with an offense committed within the District of Columbia. The objection to the indictment, being raised after verdict, came too late, since the deficiency in the indictment, if any, was only technical. Furthermore, if there was any defect in the indictment, it should be disregarded under the provisions of Section 269 of the Judicial Code as amended.

II

Assuming that the indictment does not state an offense committed within the District of Columbia, the petitioners have waived their privilege to be tried at the place where the offense was committed. The provisions of Article III, Section 2, Clause 3, of the Constitution and the Sixth Amendment have substantially the same meaning. This Court decided in *Patton* v. *United States*, 281 U. S. 276, that the provisions of Article III, Section 2, are not jurisdictional. These provisions confer personal rights, which, like the right to trial by jury and other constitutional rights, may be waived.

By failing to make any objection before verdict, and by waiting to see what the verdict would be before raising the question, the petitioners waived their privilege to insist on trial in another place. Failure to object in a civil case constitutes a waiver, and the authorities indicate that a similar failure in a criminal case may amount to a waiver. Petitioners were represented by counsel, and must be deemed to have acted with knowledge of their constitutional privileges, and their failure to object, therefore, was a waiver intelligently made of these privileges.

III

The Supreme Court of the District of Columbia had jurisdiction to try this case. The Supreme Court of the District is vested with all the power and jurisdiction of a District Court, and in the trial of crimes against the United States which

would elsewhere be tried in a District Court, the Supreme Court sits as a District Court. Numerous decisions recognize that the Supreme Court of the District has all the powers of a District Court. There is no territorial limitation upon the jurisdiction of the District Courts, and, accordingly, none upon the jurisdiction of the Supreme Court of the District as a District Court other than Article III, Section 2, and the Sixth Amendment of the Constitution. Since the constitutional privileges of the petitioners were waived, the Supreme Court of the District had jurisdiction to try these cases.

ARGUMENT

I

THE INDICTMENT IS SUFFICIENT AFTER VERDICT TO CHARGE THE OFFENSE OF CAUSING A LETTER TO BE DELIVERED BY MAIL IN THE DISTRICT OF COLUMBIA, WHICH IS AN OFFENSE WITHIN THE JURISDICTION OF THE TRIAL COURT

Section 215 of the Criminal Code (*infra*, pp. 48–49) is the section making it an offense to use the mails in the execution of a scheme to defraud. It provides in part as follows:

> Whoever, having devised * * * any scheme or artifice to defraud * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter * * * in any post-office * * * to be sent or delivered by the post-office establishment of the

> United States, * * * or shall knowingly cause to be delivered by mail according to the direction thereon, * * * any such letter [shall be fined or imprisoned].

It is plain from the wording of this statute that it is an offense against the United States to cause a letter to be delivered in the execution of a scheme to defraud, and this Court has held that the offense may be prosecuted at the place where the letter is delivered. *Salinger* v. *Loisel*, 265 U. S. 224; *Salinger* v. *United States*, 272 U. S. 542. We contend that the indictment involved in this case is sufficient, at least after verdict, to charge the offense of causing a letter to be delivered in the District of Columbia in the execution of a scheme to defraud. And in the alternative we contend that whatever defects there may be in the indictment are cured by (1) Section 1025 of the Revised Statutes (*infra*, p. 45), (2) the fact that the objection was not raised until after verdict, and (3) the provisions of the Act of February 26, 1919, amending Section 269 of the Judicial Code (*infra*, p. 49).

A. *The indictment states facts sufficient to show the commission of an offense in the District of Columbia*

The indictment in this case (R. 1–3) alleges that the petitioners devised a scheme to defraud and that in the execution of this scheme they (R. 2):

> did place and cause to be placed in the Post Office at the City of Scranton, in the State

> of Pennsylvania, to be sent and delivered by the Post Office establishment of the United States of America, to the addressee thereof, three certain accounts enclosed in a certain envelope addressed to Merchants' Transfer and Storage Company, 920 E Street, N.W., Washington, D. C. * * *.

The petitioners' contention in substance is that this indictment fails to charge an offense in the District of Columbia because it does not use the formal words of the statute, namely, did "cause to be delivered" in the District of Columbia. The indictment does in so many words charge that the defendants did "cause to be placed * * * to be sent and delivered * * * to the addressee" a letter addressed to the District of Columbia. The substance and effect of the words in the indictment are to charge an offense in the District of Columbia, although the precise words of the statute were not used. An indictment for using the mails to defraud need not follow the exact language of the statute. *Olsen* v. *United States,* 287 Fed. 85 (C. C. A. 2d).

The indictment at least charges the mailing of a letter addressed to the District of Columbia. It is common knowledge and experience that the mailing of a letter addressed to a particular place almost invariably results in causing that letter to be delivered to its address. This Court has clearly recognized this fact and has stated it in the form

of a presumption. In *Rosenthal* v. *Walker*, 111 U. S. 185, 193, it was said:

> The rule is well settled that if a letter properly directed is proved to have been either put into the post office or delivered to the postman, it is presumed, from the known course of business in the post office department, that it reached its destination at the regular time, and was received by the person to whom it was addressed.

See also *Dunlop* v. *United States*, 165 U. S. 486, 495; *United States* v. *Kenofskey*, 243 U. S. 440.

The rule thus announced has been followed by the lower Federal courts in numerous decisions.[1] Thus the delivery of the letter in the District of Columbia was a reasonable implication from facts clearly charged. "Reasonable implications from facts clearly charged may be indulged in ascertaining the true meaning of an indictment." *Ex parte Pierce*, 155 Fed. 663, 665 (C. C. E. D. Mo.), affirmed, *Pierce* v. *Creecy*, 210 U. S. 387; *United States* v. *Barber*, 157 Fed. 889 (W. D. Wis.).

The language of the indictment, coupled with the plain implication that by mailing the letter the peti-

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[1] *United States* v. *Rice*, 281 Fed. 326, 330 (S. D. Tex.); *Ex parte Bergdoll*, 274 Fed. 458, 466 (D. Kan.); *United States* v. *General Inspection & Loading Co.*, 204 Fed. 657, 658 (D. N. J.); *Davidson S. S. Co.* v. *United States*, 142 Fed. 315, 318 (C. C. A. 8th); *Christensen Engineering Co.* v. *Westinghouse Air Brake Co.*, 135 Fed. 774, 777 (C. C. A. 2d); *First Nat. Bank* v. *Fourth Nat. Bank*, 56 Fed. 967, 969 (C. C. A. 6th); *Anderson* v. *Saint*, 46 Fed. 760, 766 (C. C. W. D. Pa.).

tioners caused the letter to be delivered in the District of Columbia, was sufficient to warrant the submission of the case to the jury under instructions that delivery in the District was an essential ingredient of the crime. In the absence of any bill of exceptions containing the testimony and the court's instructions to the jury, it must be assumed that the court so construed the indictment, instructed the jury accordingly, and that the jury found on sufficient evidence that the letter was delivered in the District. *Dunham* v. *United States,* 289 Fed. 376, 379 (C. C. A. 5th); *Katz* v. *United States,* 273 Fed. 157, 159 (C. C. A. 1st), certiorari denied, 257 U. S. 641; *McCarty* v. *United States,* 101 Fed. 113 (C. C. A. 8th).

B. *Any defects in the indictment are cured by Section 1025 of the Revised Statutes*

Congress has declared in no uncertain terms that indictments are to be judged by their substance, and not by their form. Section 1025 of the Revised Statutes (*infra,* p. 45) provides:

> No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

This provision has been frequently applied by the courts, and we submit that the present indictment falls plainly within its terms. In *Dunbar* v. *United States*, 156 U. S. 185, 192, this Court upheld an indictment by authority of this statute, and stated that the provision—

> is applicable where the only defect complained of is that some element of the offence is stated loosely and without technical accuracy.

The defendants knew that they had been indicted in the District of Columbia. They knew that, if they objected, they could not be tried in the District of Columbia for an offense which was not committed within the District. The indictment charged them with acts which undoubtedly caused the letters to be delivered within the District, and it must be presumed that such delivery was found under proper instructions from the court. There is no contention that the petitioners were surprised at the trial or that they were not ready or were unable properly to present their defense. We believe that the situation is covered by the decision of this Court in *Lamar* v. *United States*, 241 U. S. 103, 116–117, where this Court said:

> It is moreover to be observed that there is not the slightest suggestion that there was a want of knowledge of the crime which was charged or of any surprise concerning the same, nor is there any intimation that any request was made for a bill of particulars

concerning the details of the offense charged. Under this situation we think that the case is clearly covered by § 1025, Revised Statutes.

The indictment plainly informed the petitioners of the acts with which they were charged, namely, mailing a letter in Scranton to be delivered to the addressee in Washington—in other words, by mailing it, causing it to be delivered to the addressee. If this be not the literal charge it is plainly to be implied and must have been so understood. The question raised is purely one of form within the ambit of Section 1025 of the Revised Statutes. That section has frequently been applied in situations similar to the present case. Thus, in *Fenour* v. *United States*, 14 F. (2d) 888 (C. C. A. 3d), an indictment for using the mails to defraud was upheld, although it contained inaccurate allegations that certain transactions were between certain companies. In *Olsen* v. *United States*, 287 Fed. 85 (C. C. A. 2d), an indictment for using the mails to defraud was held sufficient, in view of Sec. 1025 of the Revised Statutes, although it failed to allege that the matter deposited was to be sent or delivered by the post office establishment of the United States. In *Grandi* v. *United States*, 262 Fed. 123 (C. C. A. 6th), an indictment charging the defendant with receiving goods in interstate commerce, knowing the same to have been stolen, was held valid although it did not directly allege that the goods had been stolen. And in *Bloch* v. *United States*, 261

Fed. 331 (C. C. A. 6th), certiorari denied, 253 U. S. 492, an indictment for stealing goods from an interstate shipment was upheld under Section 1025 although it did not directly allege the ownership of the goods. Section 1025 has found application in numerous other instances.*

C. *The petitioners' objection to the indictment, made for the first time after verdict, comes too late*

Although the allegations in the indictment may not be as full or complete as they might be, and assuming for the purpose of argument that the indictment might have been objectionable on demurrer or motion to quash, we submit that whatever defects there may have been can not avail the petitioners at this stage of the proceeding. The petitioners made no attack on the indictment prior to the trial. It was not until after a verdict of guilty had been rendered against them that they raised the question which they now present through a motion in arrest of judgment, which is addressed solely to the sufficiency of the indictment, does not question the sufficiency of the proofs to show a crime

*The following cases may be referred to as examples: *Dunbar* v. *United States*, 156 U. S. 185; *Holt* v. *United States*, 218 U. S. 245; *Boehm* v. *United States*, 6 F. (2d) 497 (C. C. A. 7th); *Phipps* v. *United States*, 251 Fed. 879 (C. C. A. 4th); *Kessler* v. *United States*, 237 Fed. 8 (C. C. A. 8th); *Hanks* v. *United States*, 283 Fed. 878 (C. C. A. 6th); *Rosenfield* v. *United States*, 272 Fed. 469 (C. C. A. 7th); *Wright* v. *United States*, 168 Fed. 805 (C. C. A. 5th), certiorari denied, 181 U. S. 630.

actually committed in the District, and does not assert that the jury did not find that the letters were delivered in the District of Columbia.

It is settled in many decisions of the courts that defects in the form of an indictment which can not have misled the defendant are cured by the failure to object until after a verdict has been rendered. In *Holmgren* v. *United States*, 217 U. S. 509, 523, this Court referred to Section 1025 of the Revised Statutes, *supra*, and held that where the question was not raised until after verdict "it is too late to urge such objections to a matter of form unless it is apparent that it affected the substantial rights of the accused." Similar holdings have been made in many cases.*

D. *If there is any defect in the indictment it should be disregarded because of the provisions of Section 269 of the Judicial Code as amended*

The Act of February 26, 1919 (*infra*, p. 49) amended Section 269 of the Judicial Code by adding to that section the following sentence:

> On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire

*See, for example, *Serra* v. *Montoya*, 204 U. S. 470; *Rosen* v. *United States*, 161 U. S. 29, 33; *Wilson* v. *United States*, 275 Fed. 307, 311 (C. C. A. 2d), certiorari denied, 257 U. S. 649; *McGrath* v. *United States*, 275 Fed. 294 (C. C. A. 2d); *Montoya* v. *United States*, 262 Fed. 759, 760 (C. C. A. 8th); *Nemoof* v. *United States*, 209 Fed. 911 (C. C. A. 3d).

> record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.

We believe that this provision is specifically applicable to the instant case. In *Horning* v. *District of Columbia,* 254 U. S. 135, this Court affirmed a judgment of conviction against a defendant, although the trial judge had used the following extremely strong language in charging the jury: "Of course, gentlemen of the jury, I can not tell you, in so many words, to find defendant guilty, but what I say amounts to that." (254 U. S. at 140.) This Court said (p. 139):

> If the defendant suffered any wrong it was purely formal since, as we have said, on the facts admitted there was no doubt of his guilt. Act of February 26, 1919, c. 48, 40 Stat. 1181, amending § 269 of the Judicial Code; Act of March 3, 1911, c. 231, 36 Stat. 1087.

In that case the defendant contended that the action of the judge had deprived him of his constitutional right to a trial by jury. It was held that under the circumstances the error was purely formal. Similarly, we contend that in this case the error, if any, in failing to state more specifically the offense with which the petitioners were charged was purely formal, and that since the Act of February 26, 1919, at least, it should not be ground for reversal.

The lower Federal courts have frequently applied this amendment to Section 269 of the Judicial Code to situations similar to that involved in the instant case. Thus it has been held that convictions should not be reversed because of manifest clerical error in the indictment. *Appell* v. *United States,* 29 F. (2d) 279 (C. C. A. 5th); *Lund* v. *United States,* 19 F. (2d) 46 (C. C. A. 8th); *Gay* v. *United States,* 12 F. (2d) 433 (C. C. A. 5th), certiorari denied, 273 U. S. 705; *Goldberger* v. *United States,* 4 F. (2d) 10 (C. C. A. 3d). Similarly it has been held that an indictment for conspiracy, which through the use of one word instead of another failed legally to charge a conspiracy, was sufficient to sustain a conviction when the question was raised for the first time in the appellate court. *Miller* v. *United States,* 4 F. (2d) 228 (C. C. A. 7th), certiorari denied, 268 U. S. 692. And an indictment for subornation of perjury was held sufficient under this statute although it failed to allege that the perjury was committed willfully. *Link* v. *United States,* 2 F. (2d) 709 (C. C. A. 6th).[4]

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[4] Some of the other cases applying this statute in criminal cases are *Lewis* v. *United States*, 38 F. (2d) 406 (C. C. A. 9th); *Kercheval* v. *United States*, 36 F. (2d) 766 (C. C. A. 5th), certiorari denied, 281 U. S. 745; *Stetson* v. *United States*, 257 Fed. 689 (C. C. A. 6th); *Grandi* v. *United States*, 262 Fed. 123 (C. C. A. 6th); *Lockhart* v. *United States*, 264 Fed. 14 (C. C. A. 6th), certiorari denied, 254 U. S. 645; *Harrington* v. *United States*, 267 Fed. 97 (C. C. A. 8th); *Grant* v. *United States*, 268 Fed. 443 (C. C. A. 6th), certiorari denied, 256 U. S. 700; *Wagman* v. *United States*, 269 Fed. 568 (C. A. A. 6th), certiorari denied, 255 U. S. 572.

The petitioners' objection to the indictment is purely formal. They knew exactly the nature of the offense with which they were charged, and they knew it was an offense committed within the District of Columbia. They must have gone to trial on that basis. They took part in an extended trial, lasting from March 18, 1930, through March 31, 1930 (R. 8), and at no time did they make any objection either to the venue or on the ground that they were not properly informed as to the nature of the charge against them.[5] These facts make it plain that the contention now raised by the petitioners relate to matters of form only which did "not tend to the prejudice of the defendant" nor "affect the substantial rights of the parties." Under these circumstances we contend that the decisions of this Court and the mandates of Congress that purely technical errors must be disregarded, expressed in Section 1025 of the Revised Statutes and Section 269 of the Judicial Code, as amended, require the affirmance of the judgment below.

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[5] The situation is the same as that involved in *Nemcof* v. *United States*, 202 Fed. 911 (C. C. A. 3d), where the court said:

"The controversy affords an excellent example of trial with limited liability, for it is clear that, if sentence could never be imposed on the indictment, the defendants ran no real risk in taking the chance of a favorable verdict."

If the petitioners had been acquitted on the indictment in the present case, it would have barred a subsequent prosecution. *United States* v. *Ball*, 163 U. S. 662.

II

THE PETITIONERS HAVE WAIVED THEIR CONSTITUTIONAL RIGHT, IF ANY, AS TO THE PLACE OF TRIAL

A. *The provisions in Article III, Section 2, and in the Sixth Amendment of the Federal Constitution are not jurisdictional, but only confer personal rights which may be waived*

Article III, Section 2, Clause 3, of the Constitution (*infra*, p. 44) provides:

> The Trial of all Crimes * * * shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; * * *.

The Sixth Amendment of the Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

These two provisions have substantially the same meaning, and the latter, although it differs somewhat in its language and is more detailed, is regarded as reflecting the meaning of the former, and does not alter or modify its effect. *Patton* v.

United States, 281 U. S. 276, 298; *Callan* v. *Wilson*, 127 U. S. 540, 549. This Court has definitely decided that these provisions confer a privilege on the accused which may be waived and are not jurisdictional requirements. In the *Patton* case, *supra*, this Court said (p. 298):

> Upon this view of the constitutional provisions we conclude that Article III, Section 2, is not jurisdictional, but was meant to confer a right upon the accused which he may forego at his election. To deny his power to do so, is to convert a privilege into an imperative requirement.

Although in that case the court was considering the waiver of the right to trial by jury, the language is not qualified to apply only to the part of the section dealing with that subject, and no reason is apparent why it should be so restricted.

One of the causes of the separation from England set forth in the Declaration of Independence was "For transporting us beyond Seas to be tried for pretended offences." The fear induced by this practice was still present in the minds of the people at the time of the adoption of the Constitution. They feared a strong government extending beyond the borders of their respective States, believing that it might become an instrument of oppression such as England had been in the past. The Sixth Amendment was intended to guarantee to the citizens the *right* to a fair trial in criminal prosecutions at the place where the offense charged was

alleged to have been committed, so that they could not be transported a great distance from such places against their wills and arbitrarily punished for "pretended offences." Similar reasons for the protection of the individual led to the adoption of the remaining of the first ten Amendments. These Amendments were adopted at substantially the same time and the provisions of one should be considered in its relation to all. The Ninth Amendment provides that—

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

This statement, coming after the specific provisions in the preceding eight Amendments, clearly indicates that the Amendments dealt with individual *rights,* not with jurisdictional limitations. The rights, having been conferred for the benefit of the individual, may be waived. As was pointed out in *Patton v. United States, supra,* pp. 305–306, the public interest in their preservation is not such that the consent of the individual to abandon them will be overridden.

The decisions of this Court have consistently sustained the above construction of the first ten Amendments. Even the right to a trial by jury in a criminal prosecution, probably the most cherished privilege in Anglo-American law, may be waived. *Patton* v. *United States, supra.* Others in the same category are the right against being put in jeopardy twice for the same offense, *Trono* v.

United States, 199 U. S. 521; the right to a speedy trial, *Worthington* v. *United States,* 1 F. (2d) 154 (C. C. A. 7th), certiorari denied, 266 U. S. 626; and the right to be confronted by witnesses for the Government, *Diaz* v. *United States,* 223 U. S. 442. If the defendant in a criminal case takes the witness stand, he may be cross-examined as to his testimony, *Fitzpatrick* v. *United States,* 178 U. S. 304; *Powers* v. *United States,* 223 U. S. 303; and the privilege against unlawful searches and seizures may be waived, *Rossini* v. *United States,* 6 F. (2d) 350 (C. C. A. 8th).

With respect to the right to trial in the district where the crime is alleged to have been committed, granted by Article III, Section 2, and the Sixth Amendment, a question similar to that involved in this case was decided in *United States* v. *Rosenstein,* 34 F. (2d) 630 (C. C. A. 2d). It appeared there during the course of the trial in the Southern District of New York that one of the jurors who had been accepted by the parties was not a resident of the Southern District, in other words, that the jury was not in fact as to all its members a jury from the district in which the offence had been committed. It was held that the defendants' right to such a jury might be waived, and that it had been waived by the failure to raise the objection when the jury was drawn. Two of the defendants in that case presented petitions for certiorari to this Court relying on this point. This Court denied both petitions. *Rosenstein* v. *United States,* 280 U. S.

581; *Levy* v. *United States*, 280 U. S. 602. See also *Kohl* v. *Lehlbach*, 160 U. S. 293, 300–301.

As pointed out in the opinion below, State courts have construed provisions in State constitutions, relating to the place of holding criminal prosecutions, as conferring rights on the accused, which may be waived. *In re Mote*, 98 Kan. 804; *Hourigan* v. *Commonwealth*, 94 Ky. 520; *State* v. *Browning*, 70 S. C. 466; *People* v. *Penn*, 302 Ill. 488; *Kennison* v. *State*, 83 Neb. 391.

Accordingly, we submit that as far as the Federal Constitution is concerned, there is no reason why the right to a trial in the place where the offense was committed may not be waived.

B. *The defendants waived their privilege to be tried at the place where the crime was committed*

The record in this case discloses that after the indictment was returned in the Supreme Court of the District of Columbia, the defendants were arraigned and each pleaded not guilty. (R. 4.) Thereafter they went to trial, and it was not until after verdict, by motion in arrest of judgment, that they raised the question that the indictment did not charge an offense committed in the District of Columbia. (R. 4–5.) We contend that by their failure to object before verdict, the defendants waived the privilege, granted to them by Article III, Section 2, and the Sixth Amendment, to object to the

forum in which they voluntarily proceeded to trial. Even the accused in a criminal case should not be permitted to play fast and loose with the court. He has no constitutional right to speculate upon a favorable verdict and to upset the verdict if it goes against him.

A very similar question was considered by Mr. Justice Story, on Circuit, in *United States* v. *Cornell,* 2 Mason 91 (C. C. R. I.). The defendant was convicted at Providence of a murder committed on United States property at Newport. Section 29 of the Judiciary Act of 1789 (1 Stat. 73, 88) provided that—

> in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that can not be done without great inconvenience, twelve petit jurors at least shall be summoned from thence.

A motion for a new trial was presented on the ground that the defendant had been tried in the wrong county. This motion was overruled. Some doubt existed whether Section 29 of the Judiciary Act was still in effect, but the court held that, even assuming the section remained in full force, the objection had been waived. The following language of Mr. Justice Story is applicable in the present case (pp. 99–100, 101):

> No objection was made by either party to the time or place of trial; and unless upon motion by some party, I do not perceive that

> the Court was bound to order a special session.
>
> * * * * *
>
> The right to a trial in the county where the offence is committed, is a privilege granted to the prisoner. He is not bound to insist upon it, unless he chooses. He may waive it, and require an immediate trial.

See also *Rosenstein* v. *United States,* 34 F. (2d) 630 (C. C. A. 2d), certiorari denied, 280 U. S. 581, discussed on p. 22, *supra.*

Although this Court has not been called upon to consider the precise question now involved, it has determined in numerous decisions that a trial by jury in civil cases may be waived by the parties and that a failure to demand a jury before trial constitutes a waiver of the right. Thus, in *Kearney* v. *Case,* 12 Wall. 275, 284, this Court said—

> we think that it is almost a necessary inference, where a party is present by counsel and goes to trial before the court without objection or exception, he has voluntarily waived his right to a jury, and must be held in this court to the legal consequences of such a waiver.

And in *Duignan* v. *United States,* 274 U. S. 195, 199, this Court held:

> Appellant's failure to demand a trial by a common-law jury amounted, we think, to a waiver of the constitutional right, if any, now claimed.

See also *Phillips* v. *Preston*, 5 How. 278, 290; *Road District* v. *St. Louis S. W. Railway*, 257 U. S. 547, 562.

The objection raised by the defendants in the present case is purely one of venue. The Supreme Court of the District of Columbia is a court of the United States just as much as is the District Court for the Middle District of Pennsylvania. Whether the offense were tried in the District of Columbia or in the Middle District of Pennsylvania, the trial would in either case be of an offense against the United States before a court of the United States. There is no question of trying an offense against one sovereignty in the courts of another sovereignty.

It has been determined in numerous decisions of this Court that in civil cases any objection to the venue is waived by a general appearance of the defendant without more. *Toland* v. *Sprague*, 12 Pet. 300, 330; *Ex parte Schollenberger*, 96 U. S. 369, 378; *Harkness* v. *Hyde*, 98 U. S. 476–479; *Charlotte Nat. Bank* v. *Morgan*, 132 U. S. 141; *Fitzgerald Construction Co.* v. *Fitzgerald*, 137 U. S. 98; *St. Louis &c. Railway* v. *McBride*, 141 U. S. 127; *Central Trust Co.* v. *McGeorge*, 151 U. S. 129; *Interior Construction Co.* v. *Gibney*, 160 U. S. 217; *United States* v. *Hvoslef*, 237 U. S. 1, 12; *Camp* v. *Gress*, 250 U. S. 308, 311; *General Investment Co.* v. *Lake Shore Railway*, 260 U. S. 261, 272–273; *Lee* v. *Chesapeake & Ohio Railway*, 260 U. S. 653, 655;

Burnrite Coal Co. v. *Riggs*, 274 U. S. 208, 211–212. These decisions have been made notwithstanding statutes which provide for trial in the proper district in terms far more emphatic than the Constitutional provision granting the defendant the privilege of being tried in the State or district where the offense was committed.[6] We believe that these cases holding that a failure to object to a defect in venue constitutes a waiver of the defect in civil cases are equally applicable to a similar failure to object in criminal cases.

This Court has applied the rule that the failure to object to an error constitutes a waiver in criminal cases as well as civil. In *Queenan* v. *Oklahoma*, 190 U. S. 548, it appeared during the trial of an indictment for murder that one of the jurors had been convicted of a crime and was consequently ineligible. Counsel for the defendant made no objection and the trial continued. This Court not only held that the defendant could waive the defect, but held

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[6] Section 11 of the Act of September 24, 1789, c. 20, 1 Stat. 73, 79, provided that "no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ * * *." Similar provisions have been carried forward in later statutes involved in the more recent cases cited above.

Section 5198 of the Revised Statutes, involved in *Charlotte Nat. Bank* v. *Morgan*, *supra*, provided for suits against national banks in State courts only in the county in which the bank was located.

that his failure to object constituted a waiver. It said (p. 552) —

> it was his duty to object at the time if he was going to object at all. He could not speculate on the chances of getting a verdict and then set up that he had not waived his rights.

Similarly, in *Levin* v. *United States*, 5 F. (2d) 598, 600 (C. C. A. 9th), certiorari denied, 269 U. S. 562, it was held that—

> the constitutional immunity from second jeopardy is a personal privilege, which may be waived, that the waiver may be either express or implied, that it is always implied when there is failure to raise the objection at the first opportunity, and that it comes too late when raised for the first time on motion in arrest of judgment.

The same result was reached in *Blair* v. *White*, 24 F. (2d) 323, 324–325 (C. C. A. 8th), in *Brady* v. *United States*, 24 F. (2d) 399, 405 (C. C. A. 8th), and *Callahan* v. *United States*, 35 F. (2d) 633, 634 (C. C. A. 10th). These decisions relating to the Constitutional provision against double jeopardy provided by the Fifth Amendment are equally applicable, we submit, to the Constitutional privilege for trial at the place where the offense was committed provided by the Sixth Amendment and by Article III, Section 2, of the Constitution.

In *Silverberg* v. *United States*, 4 F. (2d) 908 (C. C. A. 5th), certiorari denied, 268 U. S. 706, the court held that objection that a defendant in a criminal

case was tried in the wrong division of a district was waived by failure to raise it before the trial commenced. See also *Au Wee Sheung* v. *United States,* 44 F. (2d) 681, 682 (C. C. A. 7th).

The precise question here involved has been considered by State courts in deciding cases arising under State constitutional provisions for trial of criminal offenses at the place where the crime was committed. In *In re Mote,* 98 Kan. 804, it was held that a defendant's objection to the venue of an indictment was waived by his plea of guilty, although Section 10 of the Kansas Bill of Rights provided that "the accused shall be allowed * * * a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed." In *State* v. *Browning,* 70 S. C. 466, it was held that a defect in the venue "was waived when the defendant contested the case upon the merits." Other cases reaching the same result are *Davis* v. *People,* 83 Colo. 295; *State* v. *Pace,* 159 N. C. 462; *State* v. *Bethea,* 88 S. C. 515. See also *Woody* v. *State,* 98 Tex. Crim. 187, 189; *Oborn* v. *State,* 143 Wis. 249.

We do not believe that there is anything in the decisions of this Court in *Thompson* v. *Utah,* 170 U. S. 343, or *Patton* v. *United States,* 281 U. S. 276 which is contrary to this position. In *Thompson* v. *Utah* it was held that the defendant could not through silence waive his right to trial by a constitutional jury of twelve men when a statute of Utah provided for trial before a jury of eight. But as

this Court pointed out in the *Patton* case (p. 293) the defendant in *Thompson* v. *Utah* "had been silent only under constraint of the statute." In the present case there was no constraint of any sort on the defendants. The objection could have been raised before verdict, but they elected to plead to the indictment and to proceed to trial without objection. In the *Patton* case it was said that waiver of trial by jury would be allowed only when "the express and intelligent consent of the defendant" has been obtained. (281 U. S. at 312.) No act of the defendants could have quite so unequivocally waived their right to refuse to be tried in the District as did their proceeding to trial without objection and participating therein until the trial was ended. To voluntarily do that which one may lawfully refuse to do is an express waiver of the right to refuse. All the defendants waived in this case was the asserted right to insist that the charge as laid in the indictment was triable before a jury in the Middle District of Pennsylvania and could not be tried before a jury in the District of Columbia because of the form in which the allegations of the indictment were cast. Surely it is difficult to see how it can be said that such a right is of so high a character that it cannot be waived by joining issue on the indictment and proceeding to trial thereunder in the District of Columbia.

III

THE SUPREME COURT OF THE DISTRICT OF COLUMBIA IN THIS CASE HAD THE SAME JURISDICTION AS A DISTRICT COURT OF THE UNITED STATES AND THERE WAS NO TERRITORIAL LIMITATION UPON ITS JURISDICTION

The petitioners contend that under the Code of the District of Columbia the jurisdiction of the Supreme Court of the District in criminal cases is limited to the trial of crimes and offenses committed within the District. It is contended that Section 44 of Title 18 of the "D. C. Code" (1929) imposes a territorial limitation upon the Supreme Court of the District in criminal cases and, assuming that the petitioners were charged with a crime committed in Pennsylvania, it is said that the Supreme Court of the District was without jurisdiction to try the petitioners and that this want of jurisdiction could not be waived. Of course we concede that if the indictment is to be interpreted as petitioners contend and the Supreme Court of the District was without jurisdiction, that want of jurisdiction was not waived, for it could not be waived. We believe, however, that the petitioners have misapprehended the provisions of the "D. C. Code" to which they refer and that having waived their constitutional privileges for the reasons indicated in Point II of this brief, the Supreme Court had jurisdiction to try this case.

Section 43 of Title 18 of the "D. C. Code" (1929) provides that the Supreme Court of the District "shall possess the same powers and ex-

ercise the same jurisdiction as the district courts of the United States, and shall be deemed a court of the United States." Section 47 of Title 18 of the "D. C. Code" (1929) provides that the justices of the Supreme Court of the District "in addition to the powers and jurisdiction possessed and exercised by them as such, under this chapter, shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of the district courts of the United States." These provisions clearly make the Supreme Court of the District a court of the United States with all the powers and jurisdiction of a District Court of the United States. In the present case the Supreme Court of the District, engaged in the trial of offenses against the laws of the United States applicable throughout the States as well as the District, possessed the same power and jurisdiction as a District Court of the United States.

The nature of the Supreme Court of the District and its jurisdiction have been considered by this Court in several cases. In *Metropolitan Railroad Co.* v. *Moore,* 121 U. S. 558, this Court said at page 571:

> But the act of March 3, 1863, "to reorganize the courts in the District of Columbia and for other purposes," 12 Stat. 762, was the introduction into the District of Columbia of a new organization of its judicial system. It established a single court, to be called the Supreme Court of the District of

Columbia, having general jurisdiction in law and equity. It gave to that court the same jurisdiction as was then possessed and exercised by the Circuit Court of the District of Columbia, and to the justices of the new court the powers and jurisdiction of the judges of the Circuit Court. It also gave to each of the justices of the court power to hold a District Court of the United States for the District of Columbia, with all the powers and jurisdiction of other District Courts of the United States; and also to hold a Criminal Court for the trial of all crimes and offences arising within the District, with the same powers and jurisdiction as was then possessed and exercised by the Criminal Court of the District of Columbia. All the courts, therefore, previously existing in the District of Columbia, as separate and independent tribunals, having special and diverse jurisdictions, were consolidated into the new Supreme Court of the District of Columbia. The arrangement of that court, for purposes of convenience, and despatch of business, into general and special terms, was taken from the system long previously established and known in the state of New York in reference to its Supreme Court; and, for the purpose of determining the relation of the special to the general term, the act of Congress of March 3, 1863, adopted the provisions from the legislation of New York incorporated into the sections of the Revised Statutes now under consideration.

In *Benson* v. *Henkel,* 198 U. S. 1, this Court held that the Supreme Court of the District of Columbia was a court of the United States so that a person apprehended in another district could be removed for trial before the Supreme Court of the District as a court of the United States. See also *Hyde* v. *Shine,* 199 U. S. 62. In *Federal Trade Commission* v. *Klesner,* 274 U. S. 145, this Court said at page 153:

> By § 61 of the Code of Laws for the District of Columbia, 31 Stat. 1199, the Supreme Court of the District is given the same powers and the same jurisdiction as district courts of the United States and is to be deemed a court of the United States, and shall exercise all the jurisdiction of one, and a special term of the court shall be a district court of the United States. The justices of the court are vested with the power and jurisdiction of judges of the district courts of the United States. Sections 62 and 84, Code of the District of Columbia, 1924. It follows that the Trade Commission could use the Supreme Court of the District to enforce the procedure needed on its part to take evidence and thus enable it to reach its conclusions, and in this could avail itself of the power of contempt of that court.
>
> It has been the evident intention of Congress that laws generally applicable to enforcement of what may be called federal law in the United States generally should have the same effect within the District of Co-

lumbia as elsewhere. For this purpose the courts of the District of Columbia are federal courts of the United States. *Keller* v. *Potomac Electric Company,* 261 U. S. 428, 442. They are part of the federal judicial system.

In *Hine* v. *Morse,* 218 U. S. 493, 504, this Court said:

> The Supreme Court of the District is one of general jurisdiction. It possesses all of the powers which by statute are conferred upon the Circuit and District Courts of the United States.

In *Swift & Co.* v. *United States,* 276 U. S. 311, this Court said at page 324:

> *First.* At the time the questions were certified, there was a contention that the Supreme Court of the District lacked jurisdiction of the subject matter, because it is not a district court of the United States within the meaning of the Anti-Trust Act. After entry of the case in this Court, that contention was disposed of by *Federal Trade Commission* v. *Klesner,* 274 U. S. 145. Now, it is conceded that the Supreme Court of the District has power to administer relief under the Anti-Trust Act; but the claim is made that in this proceeding it was without jurisdiction, because the petition was addressed to the "Supreme Court of the District of Columbia, sitting in equity," instead of to the special term of that court "as the District Court of the United States." The

> argument has compelled enquiry into legislation affecting the courts of the District, enacted from time to time during a long period. It would not be profitable to discuss the details of the legislation. We are of opinion that this suit under § 4 of the Anti-Trust Act, which could only have been brought in a court of equity, was properly brought in the Supreme Court of the District, sitting in equity. This conclusion has support in established practice in analogous cases.

In *United States* v. *Baltimore & O. R. Co.*, 26 App. D. C. 581, after considering the several sections of the Code of the District relating to the jurisdiction of the Supreme Court of the District, the Court of Appeals said, at page 588:

> Thus, the supreme court of the District of Columbia was made by Congress a depository of the powers of Federal and State courts combined, and therefore, while it was given all the powers of a district court of the United States, the supreme court's special term, known as the "circuit court," also became the depository of its power over all common-law civil actions such as the circuit court in the State of Maryland tried and determined, and also over all common-law civil actions such as a district court of the United States could try and determine.

In *Arnstein* v. *United States*, 296 Fed. 946 (App. D. C.), the court said, at page 948:

> Section 340 of the Penal Code of the United States (Comp. St. §10514) provides

> that the offense denounced by section 37 thereof shall be cognizable in the Circuit and District Courts of the United States. The Supreme Court of the District of Columbia is a District Court of the United States, within the meaning of section 340. *Benson* v. *Henkel,* 198 U. S. 1, 13; *United States* v. *Morse,* 218 U. S. 493, 504. Hence jurisdiction of the case was vested by law in the Supreme Court of the District of Columbia.

In *Pitts* v. *Peak,* 50 F. (2d) 485 (App. D. C.), certiorari denied, October 19, 1931, the court said at page 486:

> But it is contended that because it is not specifically made an offense under the laws of the District, an indictment under it must be tried in a District Court of the United States, and that since, under the provisions of the District law, Section 56, Title 18, D. C. Code 1929, providing for special terms of the Supreme Court, one of said terms is designated as "the district court of the United States," and by the Act of April 19, 1920 (Section 347, Title 18, D. C. Code 1929) Congress has provided for the drawing of petit jurors for service in the various special terms, including inferentially said term as district court of the United States, the trial of petitioner should have been had in a court so designated rather than in the Supreme District Court of the United States, the trial special term as a criminal court, but we regard this as a play upon words, for, first of

all, it overlooks section 58 of Title 18, wherein it is provided that the several terms "are declared to be terms of the supreme court," and more particularly section 81 of Title 18 which specifically provides that the trial of crimes and misdemeanors committed in the District shall be had in the Supreme Court holding a special term as a criminal court, and this we think means all crimes, and so we have already had occasion to hold in Arnestein v. U. S., 54 App. D. C. 199, 201, that offenses made such by a law of the United States, and which by their terms are not inapplicable in the District of Columbia, are triable in the Supreme Court of the District though by the terms of the act creating the offense it is made triable in a district court of the United States, and this not only because the statute so declares but because the Supreme Court of the District as such possesses all the powers and exercises all the authority conferred by acts of Congress on the District Courts of the United States. The Supreme Court of the District is a court of the United States (Sec. 43, Title 18, D. C. Code 1929) for the administration of the laws of the United States.

Thus, it appears that in this case the Supreme Court of the District of Columbia had all the powers and exercised the same jurisdiction as a District Court of the United States.

As a District Court of the United States it possessed and exercised under Section 24 (2) of the

Judicial Code (U. S. C., Title 28, Sec. 41(2)) original jurisdiction "of all crimes and offenses cognizable under the authority of the United States" in so far as cases such as the instant case are concerned, and the only territorial limitations upon the exercise of this power are found in the provisions of Article III, Section 2 of the Constitution and of the Sixth Amendment referred to in Part II of this brief. As we have shown, these constitutional provisions are not jurisdictional but merely confer personal privileges which may be waived.

The petitioners, however, contend that this power and jurisdiction, exercised by the District Court of the District of Columbia as a District Court of the United States, is subject to an express limitation found in the "D. C. Code" (Sec. 44) which can have no application to a District Court of the United States sitting in any other district. This contention seems to us to be quite inconsistent with the clear grant of the *same* powers, and the *same* jurisdiction, as are possessed by the District Courts of the United States ("D. C. Code," Sec. 43), and is not borne out by the legislative antecedents of the Code, which is a mere codification of prior statutes having no independent statutory authority. Like the United States Code, its effect is merely *prima facie*. (Acts of May 29, 1928, 45 Stat. 1007, c. 910, Sec. 4; March 2, 1929, 45 Stat. 1540, 1541, c. 586, Sec. 3.)

This codification, so far as Sections 43 and 44 are concerned, is entirely dependent for its authority upon the existing Code of Laws of the District of Columbia (Act of March 3, 1901, 31 Stat. 1189, as amended; *infra*, pp. 45–47), which defined the jurisdiction and powers of the Supreme Court of the District of Columbia. In Section 61 of this statute it was expressly provided that—

> The said court shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States, and shall also have and exercise all the jurisdiction possessed and exercised by the supreme court of the District of Columbia at the date of the passage of this code.

That part of Section 61 down to and including the words "shall be deemed a court of the United States" was carried into Section 43 of Title 18 of the "D. C. Code." The succeeding provision "and shall also have and exercise all the jurisdiction possessed and exercised by the supreme court of the District of Columbia at the date of the passage of this code" appears to have been eliminated in the 1929 codification. Looking to the prior statutes for a definition of the jurisdiction possessed and exercised by the Supreme Court of the District of Columbia, in addition to its possession and exercise of the jurisdiction and powers of Circuit and District Courts, the codifiers quite properly attempted

in Section 44 to define this jurisdiction, of a character purely local to the District of Columbia, which takes the place of that part of Section 61 referred to above which was eliminated in the codification. Thus, it is apparent that Section 44 of Title 18 of the 1929 codification, having no statutory sanction other than as *prima facie* evidence of existing law, can not be regarded as a limitation upon the powers and jurisdiction possessed by the Supreme Court of the District of Columbia as "a court of the United States."

The conclusion that Section 44 of the "D. C. Code" can not be regarded as in limitation of the jurisdiction which the Supreme Court of the District possesses as a court of the United States is reinforced by reference to other provisions of the Code of Laws (1901) upon which this codification (1929) finds its only support. Thus, in Sections 63 and 64 the terms of the court are designated, and among these terms are found "the criminal court" and "the district court of the United States." (Sec. 64; *infra*, p. 46.) It is provided in Section 83 (*infra*, p. 47) "The trial of crimes and misdemeanors committed in the District of Columbia shall be in the Supreme Court of the District of Columbia holding a special term as a criminal court," except misdeameanors within the jurisdiction of the Court of Appeals. And then, in Section 84, it is provided:

> The said District Court [i. e., of the United States; see Sec. 64] shall have and exercise the same powers and jurisdiction as the other district courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain.

Thus, in two places, when the statute speaks of the powers of the court as a court of the United States, it specifically and expressly provides that its power and jurisdiction shall be the same as that possessed by the other District Courts of the United States. No limitation is expressed, and none can be implied in the face of such provisions.

The error in the petitioners' contention is that they rely on certain provisions of the "D. C. Code" (1929), a compilation which has no statutory authority. The applicable statutory provisions are the sections of the Code of Laws of the District of Columbia, enacted in 1901, and still in force without change, which are set out and discussed above. These provisions, together with repeated declarations of this Court, we submit, make it plain that the Supreme Court of the District of Columbia possesses the same power and authority as a district court of the United States, and that the Supreme Court of the District had authority as a court of the United States to conduct the trial at which the petitioners were convicted.

CONCLUSION

The judgment of the court below should be affirmed.

Respectfully submitted.

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MARCH, 1932.

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION

Article III, Section 2, Clause 3, of the Constitution provides as follows:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The Sixth Amendment to the Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

The Ninth Amendment to the Constitution provides as follows:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Section 1025 of the Revised Statutes (U. S. C., Title 18, Sec. 556) provides as follows:

> SEC. 1025. No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

The Code of Laws of the District of Columbia (Act of March 3, 1901, c. 854, 31 Stat. 1189, 1199, 1200, 1202) provides in part as follows:

> SECTION 1. The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, the principles of equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act shall remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of this code.
>
> * * * * *
>
> SEC. 60. CONSTITUTION.—The supreme court of the District shall continue as at present constituted, and consist of a chief justice and five associate justices, appointed by the President of the United States, by and with the advice and consent of the Senate, and holding their offices during good behavior. The chief justice and each associ-

ate justice shall receive a salary of five thousand dollars per annum, which amounts shall be paid in monthly installments, out of the Treasury of the United States, and one-half thereof shall be charged against the revenues of the District of Columbia.

SEC. 61. JURISDICTION.—The said court shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States, and shall also have and exercise all the jurisdiction possessed and exercised by the supreme court of the District of Columbia at the date of the passage of this code.

SEC. 62. POWERS OF JUSTICES.—The justices of said court, in addition to the powers and jurisdiction possessed and exercised by them as such, shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of the circuit and district courts of the United States.

SEC. 63. TERMS.—The said court shall hold a general term and special terms. The general term shall be held by at least three justices and each special term by a single justice.

SEC. 64. The special terms of said court shall be known, respectively, as the circuit court, the equity court, the criminal court, the probate court, and the district court of the United States.

* * * * *

SEC. 66. All causes in said court shall be heard and determined in special term. And the several terms are declared to be terms of the supreme court, and the judgments, decrees, sentences, orders, proceedings, and acts of said several terms shall be deemed

judgments, decrees, sentences, orders, proceedings, and acts of the supreme court.

* * * * *

SEC. 83. THE CRIMINAL COURT.—The trial of crimes and misdemeanors committed in the District of Columbia shall be in the Supreme Court of the District of Columbia holding a special term as a criminal court, except such misdemeanors as are within the jurisdiction of the police court, as to which said court shall have concurrent jurisdiction with said police court. In all trials in said special term exceptions may be taken by the accused to the rulings of the presiding justice and presented in bills of exceptions in the same manner as in the trial of civil cases, subject to provisions herein elsewhere contained.

The Act of June 30, 1902, 32 Stat. 520, 522, 523 ("An Act To amend an Act entitled 'An Act to establish a code of law for the District of Columbia' ") provides in part as follows:

Amend section 61 by inserting in the fifth line thereof, after the words "District of Columbia," the words "under the Act of Congress approved March third, eighteen hundred and sixty-three, creating that court, and."

Amend section 62 by inserting in the second line thereof, after the word "such," the words "under said Act of March third, eighteen hundred and sixty-three, and at the date of the adoption of this code."

* * * * *

Amend section 83 by striking out at the end thereof the words "subject to provisions herein elsewhere contained."

Section 215 of the Criminal Code (U. S. C., Title 18, Sec. 338) provides as follows:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "saw-dust swindle," or "counterfeit-money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "green goods," "bills," "paper goods," "spurious Treasury notes," "United States goods," "green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post-office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United

States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

The Act of February 26, 1919, c. 48, 40 Stat. 1181 (U. S. C., Title 28, Sec. 391), provides as follows:

That section two hundred and sixty-nine of the Act approved March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary," be, and the same is hereby, amended so as to read as follows:

"SEC. 269. All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law. On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

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